

REMARKS

This responds to the Final Office Action mailed on July 11, 2008.

Claims 19, 20, 22, 23, 28, 37, and 38 are amended, as a result, claims 38 are now pending in this application. Support for the amended claims is as follows:

Amended claims 19, 20, 22, 23, 28, 37, and 38 are supported at ¶43 of the specification as filed.

§103 Rejection of the Claims

Claims 1, 7-8, 11-12, 14, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. (U.S. Publication No. 2003/0208497 A1) in view of Masters et al. (U.S. 7,051,098). Applicants respectfully traverse. MPEP 2143.02 states:

If proposed modification would render the prior art invention being modified *unsatisfactory for its intended purpose*, then there is no suggestion or motivation to make the proposed modification.¹

In view of MPEP 2143.02, Witter et al. cannot be combined with Masters et al.² for such a modification would render Witter et al. unsatisfactory for its intended purpose.

Witter et al. is a “Customer Relationship Management System,”³ that states among other things:

A program for processing contacts from consumers includes a plurality of software routines activated in a sequence corresponding to common steps performed when processing a contact, including an identification routine for generating an identification screen to enable an operator to input information identifying a consumer contacting the

¹ Emphasis added.

² To support her obviousness rejection, the Examiner states: “Witter did not disclose the prioritization engine automatically to prioritize a response activity, responsive to the issue, utilizing the performance data regarding the reporting entity.” With Witter et al., the Examiner seeks to combine Masters et al. for according to the Examiner: “It would have been obvious to one of ordinary skill in the art at the time of the *invention to modify Witter to include the prioritization engine automatically to prioritize a response activity responsive to the issue*, utilizing the performance data regarding the reporting entity in order to have a user-friendly technique with which specify quality of service requirements for each host, each application, and the network in which the hosts are connected.” (emphasis added) See Final Office Action dated July 11, 2008 (herein after “Final Office Action”), pg. 3.

³ Witter et al., title.

operator to communicate an issue, a *look-up routine for searching a database containing a plurality of issue histories to identify an issue history associated with the consumer*, and a subject routine for generating a subject screen to enable the operator to input information relating to the issue. A *product routine is also included that generates an issue summary containing the issue information for storage in the database as part of the issue history associated with the consumer*. The program also includes an activity routine for generating an activity screen to enable the operator to input information describing an activity to address the issue. The issue may be stored in the database in association with the operator or another party responsible for completion of the issue summary.⁴

In contrast, Masters et al. states a:

The Resource Management Architecture, which was and is being developed by the Naval Surface Warfare Center--Dahlgren Division (NSWC-DD), provides *capabilities for monitoring hosts, networks, and applications within a distributed computing environment*. Moreover, the Resource Management Architecture provides the capability of dynamically allocating, and reallocating, applications to hosts as needed in order to maintain user-specified system performance goals.⁵ (emphasis added)

where:

6) based on *operator changes to application system priorities, whether and where new applications need to be started* or whether and which existing applications need to be shut down. FG5--Application (Resource) Control.⁶

For Witter et al. to be combinable with Masters et al., Witter et al. would need to be modified to make decisions regarding application priority and “whether and where new applications need to be started,”⁷ and not, for example, with regard to an “issue history associated with a customer.”⁸

Further, the combination of Witter et al. and Master et al. would render Witter et al. unsatisfactory for its intended purpose, where the combination would require the removal of the

⁴ *Id.*, abstract (emphasis added).

⁵ Masters et al., col. 4, lines 9-13 (emphasis added).

⁶ Masters et al., col. 8, lines 10-34. See generally Masters et al.: “Each application system and subsystem can be assigned a priority which is used at run-time to determine the relative importance of applications running in the distributed environment.” (emphasis added) Masters et al., col. 15, lines 40-43. And again, “(5) what applications should be started, stopped, or moved in response to application system priority changes,” (emphasis added) col. 18, lines 34-37.

⁷ *Id.*

⁸ Witter et al., abstract.

operator driven resolution capabilities⁹ from Witter et al. Witter et al. teach a “Customer Relationship Management System”¹⁰ that relies heavily upon operator actions with respect to issue resolution. For example, Witter et al. teaches:

The present invention further provides a program for processing contacts from consumers including an identification routine for generating an identification screen *to enable the operator to identify the consumer, a look-up routine for searching a database containing issue histories to obtain an issue history associated with the consumer for displaying to the operator, and a subject routine for generating a subject screen to enable the operator to input information relating to the issue the consumer wishes to address.* The program further generates an issue summary containing the issue information for storage in the database as part of the consumer's issue history.¹¹

And again, with respect to operator activity, Witter et al. states:

After a contact is processed and an activity is defined to address an issue raised by the consumer during the contact, *the operator may assign the issue (and associated activity) to any of a plurality of parties (or groups of parties) who can access the system via a network to review the issue and take appropriate action.*¹²

Based upon the Examiner’s attempted combination¹³ of Witter et al. and Masters et al., the operator driven issue resolution approach that is central to Witter et al. would be removed. Witter et al. would, accordingly, be rendered “unsatisfactory for its intended purpose.”¹⁴

As articulated above, the combination of Witter et al. and Masters et al. renders Witter et al. unsatisfactory for its intended purpose. Accordingly, the combination of Witter et al. and Masters et al. is improper and therefore claim 1 is allowable. As claims 7-8, 11-12, 14, and 18

⁹ Witter et al. states, *inter alia*, that “The present invention. . . assists the operator in processing the contact by generating screens in an intuitive call flow sequence based on the order of common steps involved in processing a contact, and that permits the operator and other parties to direct and track responsibility for issues (and the associated activities) resulting from processing the contact. (See Witter et al., ¶6).

¹⁰ *Id.*, title.

¹¹ *Id.*, ¶7 (emphasis added).

¹² *Id.*, ¶10 (emphasis added).

¹³ Examiner proposes to “modify Witter to include the prioritization engine automatically to prioritize a response activity responsive to the issue.” (See supra note 1.) Such a modification of Witter et al. would result in the removal of the operator driven issue resolution central to Witter et al.

¹⁴ MPEP 2143.02.

directly or indirectly depend upon claim 1, claims 7-8, 11-12, 14, and 18 are also allowable.¹⁵ Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 19, 25-26, 29, 30, 32 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. (U.S. Publication No. 2003/0208497 A1) in view of Masters et al. (U.S. 7,051,098). Applicants amend so as to clarify the claim language. Amended claim 19 includes the following limitation:

*automatically prioritizing a response activity, responsive to the issue pertaining to the network based marketplace, utilizing the performance data regarding the reporting entity.*¹⁶

Masters et al.¹⁷ is silent as to this limitation, but rather teaches a functional group that makes decisions:

6) *based on operator changes* to application system priorities, whether and where new applications need to be started or whether and which existing applications need to be shut down.¹⁸

Operator based changes to an application system priorities is different¹⁹ from automatically prioritizing a response to an issue pertaining to the network based marketplace as illustrated in amended claim 19.

As articulated above, the combination of Witter et al. and Masters et al. is silent as to all the limitations of amended claim 19. Accordingly, amended claim 19 is allowable. As claims

¹⁵ See generally MPEP 2143.03 (If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

¹⁶ Emphasis added.

¹⁷ Presumably Witter et al. is also silent as to this limitation. See Final Office, pg. 5 ("Witter did not disclose automatically prioritizing a response activity, responsive to the issue, utilizing the performance data regarding the report entity.").

¹⁸ Masters et al., col. 8, lines 30-35 (emphasis added).

¹⁹ Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows: (A)Ascertaining the differences between the claimed invention and the prior art; and . . . (C)Resolving the level of ordinary skill in the pertinent art. (MPEP 2141, Sec. II.) With respect to factual enquiry under "(A)." The gap between the prior art and the claimed invention may not be "so great as to render the [claim] nonobvious to one reasonably skilled in the art." *Id.* (See MPEP 2141, Sec. III).

25-26, 29, 30, 32 and 36 directly or indirectly depend upon claim 19, claims 25-26, 29, 30, 32 and 36 are also allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 37 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. (U.S. Publication No. 2003/0208497 A1) in view of Masters et al. (U.S. 7,051,098). Applicants amend so as to clarify the claim language. Amended claim 37 includes the following limitation:

the prioritization means automatically for prioritizing a response activity, responsive to the issue pertaining to the network based market place, utilizing the performance data regarding the reporting entity.

For the reasons outlined above²⁰ with respect to claim 19, operator based changes to an application system priorities is different from automatically prioritizing a response to an issue pertaining to the network based marketplace as recited in amended claim 37.

As articulated above, the combination of Witter et al. and Masters et al. is silent as to all the limitations of amended claim 37. Accordingly, amended claim 37 is allowable. As claim 38 directly depends upon claim 37, claim 38 is also allowable.²¹ Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 2-6, and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters et al. further in view of Khanolkar et al. (U.S. Publication No. 2007/0234426, hereinafter "Khanolkar et al."). Applicants respectfully traverse. For the reasons stated above²² with respect to claim 1, the combination of Witter et al. and Masters et al. renders Witter et al. unsatisfactory for its intended purpose. The introduction of Khanolkar et al. does not solve this problematic combination, as Khanolkar et al. teaches a system for:

²⁰ See pg. 12.

²¹ See infra note 15.

²² See pg. 9.

organizing and collating intrusion event data within a searchable database accessible to a user through a reporting system that can generate security reports and summaries of intrusion events for network service devices and that *provides information in response to user queries.*²³

Khanolkar et al. is silent as to the limitations of claim 1. As claims 2-6, and 13 depend upon claim 1²⁴, and claim 1 is allowable, claims 2-6, and 13 are allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claims 20-24 and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters et al. further in view of Khanolkar et al. (U.S. Publication No. 2007/0234426, hereinafter "Khanolkar et al."). Applicants amend so as to clarify the claim language. For the reasons stated above²⁵ with respect to amended claim 19, the combination of Witter et al. and Masters et al. does not render obvious amended claim 19. Further, the addition of Khanolkar et al. does not bridge the differences²⁶ between Witter et al. and Masters et al., and the limitations of amended claim 19 so as to render amended claim 19 obvious. Khanolkar et al. is silent as to "*automatically prioritizing a response activity, responsive to the issue pertaining to the network based marketplace, utilizing the performance data regarding the reporting entity.*"²⁷ As claims 20-24 and 31 directly or indirectly depend upon claim 19, claims 20-24 and 31, like amended claim 19, are allowable. Applicants respectfully request a notice of allowance at the Examiner's earliest convenience.

Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Masters et al. further in view of Kaplan (U.S. Patent No. 7,155,510). With respect to claim 9, Applicants respectfully traverse. Claim 1, upon which claim 9 depends, is allowable where the combination of Masters et al. and Witter et al. would render Witter et al. unsatisfactory for its intended purpose.²⁸ The addition of Kaplan, which teaches a "System and Method for

²³ Khanolkar et al., ¶6 (emphasis added).

²⁴ See infra note 15.

²⁵ See pg. 12.

²⁶ See infra note 19.

²⁷ See pg. 12.

²⁸ See pg. 9.

Forecasting Information Using Collective Intelligence from Diverse Sources,”²⁹ does not bridge the differences between Witter et al. in view of Masters et al., and amended claim 19.

Accordingly, claim 9, like claim 1, is also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter et al. in view of Masters et al., further in view of Kaplan. Applicants amend so as to clarify the claim language. Amended claim 19, upon which claim 27 depends, is allowable where amended claim 19 includes limitations that make it different from the combination of Masters et al. and Witter et al.³⁰ The addition of Kaplan, that teaches a “System and Method for Forecasting Information Using Collective Intelligence from Diverse Sources,”³¹ does not bridge the differences between Witter et al. in view of Masters et al., and amended claim 19. Accordingly, claim 27, like claim 19, is also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters further in view of Sethuram et al. (U.S. Patent No. 6,058,114, hereinafter; “Sethuram”). With respect to claim 10, Applicants respectfully traverse. Claim 1, upon which claim 10 depends, is allowable where the combination of Masters et al. and Witter et al. would render Witter et al. unsatisfactory for its intended purpose.³² The addition of Sethuram et al. does not render Masters et al. satisfactory for its intended purpose as Sethuram et al. teaches a “Unified Network Cell Scheduler and Flow Controller.”³³ Accordingly, claim 10, like claim 1, is also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters further in view of Hashem et al. (U.S. Publication No. 2003/0041291).

²⁹ Kaplan, title.

³⁰ See pg. 12.

³¹ Kaplan, title.

³² See pg. 9.

³³ Sethuram et al., title.

Applicants respectfully traverse. Claim 1, upon which claim 14 depends, is allowable where the combination of Masters et al. and Witter et al. would render Witter et al. unsatisfactory for its intended purpose.³⁴ Accordingly, claim 14, like claim 1, is also allowable. The addition of Hashem et al. does not solve this problem as Hashem et al. teaches a “Method and System for Tracking Errors.” Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience

Claim 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters further in view of Hashem et al. (U.S. Publication No. 2003/0041291).

Applicants amend so as to clarify the claim language. Amended claim 19, upon which claim 28 depends, is allowable where amended claim 19 includes limitations that make it different from the combination of Masters et al. and Witter et al.³⁵ The addition of Hashem et al., that teaches a “Method and System for Tracking Errors,”³⁶ does not bridge the differences between Witter et al. in view of Masters et al., and amended claim 19. Accordingly, claim 28, like claim 19, is also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

Claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters further in view of Robinson et al. (U.S. Patent No. 5,734,838). Applicants respectfully traverse. Claim 1, upon which claims 15-17 depends, is allowable where the combination of Masters et al. and Witter et al. would render Witter et al. unsatisfactory for its intended purpose.³⁷ Accordingly, claim 15-17, like claim 1, is also allowable. The addition of Robinson et al. does not solve this problem as Robinson et al. teaches a “Database Computing Architecture for Managing an Incentive Award Program and Checking Float of Funds at Time of Purchase.”³⁸ Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience

³⁴ See pg. 9.

³⁵ See pg. 12.

³⁶ Hashem et al., title.

³⁷ See pg. 9.

³⁸ Robinson et al., title.

Claims 33-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Witter in view of Masters further in view of Robinson et al. (U.S. Patent No. 5,734,838, hereinafter, “Robinson”). Applicants amend so as to clarify the claim language. Amended claim 19, upon which claim 33-35 depend, is allowable where amended claim 19 includes limitations that make it different from the combination of Masters et al. and Witter et al.³⁹ The addition of Robinson et al. teaches a “Database Computing Architecture for Managing an Incentive Award Program and Checking Float of Funds at Time of Purchase,”⁴⁰ does not bridge the differences between Witter et al. in view of Masters et al., and amended claim 19. Accordingly, claims 33-35, like claim 19, is also allowable. Applicants respectfully request a notice of allowance at the Examiner’s earliest convenience.

³⁹ See pg. 12.

⁴⁰ Robinson et al., title.

CONCLUSION

Applicants' respectfully submit\ that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at (408) 278-4057 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(408) 278-4057

Date

10/14/08

By

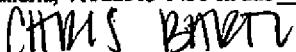


Theodore C. McCullough

Reg. No. 56,231

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of October, 2008.

Name



Signature

